

MINUTES

STATE AIR POLLUTION CONTROL BOARD MEETING

FRIDAY, JUNE 4, 2010

DEPARTMENT OF ENVIRONMENTAL QUALITY
629 EAST MAIN STREET
RICHMOND, VIRGINIA

Board Members Present:

Hullihen W. Moore, Chair
Richard D. Langford
Randolph L. Gordon

Sterling E. Rives, III, Vice-Chair
Vivian E. Thomson
Manning Gasch, Jr.

Board Members Absent:

Bruce C. Buckheit

Department of Environmental Quality:

David K. Paylor

Cindy M. Berndt

Attorney General's Office:

Kerri Nicholas, Assistant Attorney General

The meeting was convened at 9:52 a.m., recessed at 12:28 p.m., reconvened at 1:34 p.m. and adjourned at 2:30 p.m.

Minute No. 1 - Agenda Review and Approval: The Board, on a motion by Ms. Thomson, approved the agenda with the addition of a public comment period on the Particulates in Roda/Fugitive Dust Petition agenda items (30 minutes for those in favor and those opposed to the petition).

Minute No. 2 - Minutes: The Board, on a motion by Mr. Gasch, unanimously approved the minutes from the March 26, 2010, meeting.

Minute No. 3 - Ambient Air Quality Standards (9VAC5-30, Rev. A10) - Ms. Karen G. Sabasteanski presented amendments to the regulations for the control and abatement of air pollution revising the National Ambient Air Quality Standards (NAAQS) for nitrogen oxides (NO_x) measured as nitrogen dioxide (NO₂). She advised the Board that the (1) primary annual ambient air quality standard remains 53 parts per billion (ppb), (2) a new primary 1-hour standard has been added at 100 ppb and (3) the secondary standard remains at 0.053 parts per million (ppm). Further, Ms. Sabasteanski explained that (1) the annual primary standard is met when the annual average concentration in a calendar year is less than or equal to 53 ppb, (2) the 1-hour primary standard is met when the 3-year average of the annual 98th percentile of the daily maximum 1-hour average concentration is less than or equal to 100 ppb and (3) the secondary standard is attained when the annual arithmetic mean concentration in a calendar year is less than or equal to 0.053 ppm.

Ms. Sabasteanski reviewed the following amendments to Chapter 30 necessary to effectively implement the new U.S. Environmental Protection Agency requirements: (1) addition of Appendix S to 40 CFR Part 50 to the federal documents incorporated by reference list in 9VAC5-20-21 E 1 a (1) (s) and (2) addition of the new standard for NO₂ in 9VAC5-30-70.

The Board, on a motion by Ms. Thomson, unanimously adopted the amendments with an effective date consistent with the Administrative Process Act and affirmed that it would receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the Administrative Process Act.

Minute No. 4 - CAIR Nonattainment Area Requirements Parts II, III And Part IV Of 9VAC5 Chapter 140

(Rev. B10) - Ms. Mary Major presented amendments to the Regulations for Emissions Trading that address compliance in nonattainment areas for the Clean Air Interstate Regulation (CAIR). Ms. Major explained that the amendments would repeal the nonattainment area requirements and NO_x emissions compliance demonstration sections of both the NO_x annual and ozone season trading programs and the nonattainment area requirements and SO₂ emissions compliance demonstration sections of the SO₂ annual trading programs.

Ms. Major advised the Board that repeal of the sections was necessary based on a final decision of the Court of Appeals of Virginia which vacated the nonattainment provisions in both the NO_x annual and ozone season trading programs and action of the Virginia General Assembly during the 2010 Session which deleted language from the Air Pollution Control Law that allowed the Board to prohibit electric generating facilities located within a nonattainment area in the Commonwealth from meeting their NO_x and SO₂ compliance obligations through the purchase of allowances from in-state or out-of-state facilities.

Ms. Major reviewed the following amendments to Chapter 140 necessary to conform the Board's regulations to the court order and statutory amendments: (1) repealed 9VAC5-140-1061 and 9VAC5-140-1062 (9VAC5-140, Part II - NO_x Annual Trading Program); (2) repealed 9VAC5-140-2061 and 9VAC5-140-2062 (9VAC5-140, Part III - NO_x Ozone Season Trading Program); and (3) repealed 9VAC5-140-3061, and 9VAC5-140-3062 (9VAC5-140, Part IV - SO₂ Annual Trading Program).

The Board, on a motion by Mr. Rives, unanimously adopted the proposal with an effective date consistent with the Administrative Process Act and affirmed that it would receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the Administrative Process Act.

Minute No. 5 - Particulates In Roda/Fugitive Dust Petition: Ms. Crystal Bazyk provided a report to the Board on dust complaints received since the memorandum of agreement between the Department of Mines, Minerals and Energy and the Department had been executed.

Ms. Karen G. Sabasteanski presented a brief the history of the fugitive dust petition for rulemaking filed by the Sierra Club and the Southwest Appalachia Mountain Stewards, including the public comments received on the petition and the Department's recommendation to deny the petition.

Mr. Moore, in response to the Board's action at the March 2010 meeting, presented his report on the Board's options for action. Mr. Moore reviewed each of the following options for the Board:

1. Request the Department to issue a fugitive dust permit for Roda operators.
2. Institute an enforcement proceeding against Roda operators for violation of fugitive dust regulations pursuant to §10.1-1307 D and §10.1-1309.
3. Institute a proceeding under §10.1-1307 D and §10.1-1309 to determine if it is necessary to diminish and abate fugitive dust at Roda and, if so, to require the submission of plans to the Board by Roda operators to diminish and abate the causes of fugitive dust air pollution.
4. Amend and grant the Southern Appalachian Mountain Stewards and Sierra Club petition to revise the Fugitive Dust Regulations by (a) adding in 9 VAC 5-40-90 and 9 VAC 5-50-90, in addition to the amendments in the petition, as item 9 a provision that would require, where necessary, the sweeping, washing, and wetting of roads where the dust is caused by the release of the material being carried or the vehicles carrying the material, and (b) adding new sections 9 VAC 5-40-130 and 9 VAC 5-50-130 that would authorize the Board to require any coal mine, coal handling, or coal transportation facility to obtain a fugitive dust permit if the Board determines that such permit is necessary to remedy a condition that may cause or contribute to the endangerment of human health or welfare.

The Board then received comment from the following persons expressing support for Board action on the petition for rulemaking as well as other actions to control fugitive dust in Roda: Glen Besa, Felicia Eldridge, Michael Eldridge, Robert Mullins, Judy Needham, Dorothy Taubey, Laura Miller and Adam Wells. The Board then heard from John Heard, Augie Wallmeyer, Bill Axselle, and Joe Croce, all of whom spoke in opposition to Board action.

Based on the Board book material, presentations at the meeting and Board discussion, Mr. Rives moved that the Board grant the petition for rulemaking with the addition of new sections 9VAC5-40-130 and 9VAC5-50-130 that would authorize the Board to require any coal mine, coal handling, or coal transportation facility to obtain a fugitive dust permit if the Board determines that such permit is necessary to remedy a condition that may cause or contribute to the endangerment of human health or welfare. The motion died 3 to 3. Messrs. Moore and Rives and Ms. Thomson voted aye. Messrs. Langford, Gordon and Gasch voted nay.

Minute No. 6 - Petition For Rulemaking, Extremely Low Frequency Magnetic Fields: Ms. Karen G. Sabasteanski advised the Board that Mr. Kenneth C. Strong had petition the Board to initiate a rulemaking concerning extremely low frequency (ELF) magnetic fields generated by high-voltage electric power transmission lines based on concern over the siting of public recreational trails within proximity to such lines, and the potential exposure to children of ELF, which the National Institute of Environmental Health Sciences considers to be possibly carcinogenic to humans. Ms. Sabasteanski reviewed the petitioner's specific request that the Board provide that for any outdoor overhead electric power transmission line of 115 volts or more, the owners of any underlying real property and the transmission line company shall not grant permission for public recreational trails or public recreational areas within the company's right-of-way or within an area typical of company right-of-ways should no legal right-of-way agreement exist, except that necessary crossings are exempt.

Ms. Sabasteanski summarized the public comment received on the petition and advised the board that the Department believed that the petition should be denied for the following reasons:

1. Neither high-voltage electric power transmission lines nor the ELF magnetic fields generated by them are either a source of air pollutants or air pollutants in and of themselves. The board is restricted by statute to regulating air pollutants; it cannot regulate phenomena such as those identified by the petitioner.
2. The board has the authority to control pollutants emitted from a variety of sources; the board does not have the authority to control land use in proximity to a specific air pollution source. Such siting criteria and zoning issues are governed by other governmental agencies.
3. The State Corporation Commission is the entity responsible for approval of siting for electric power transmission lines. The board has no authority with respect to approval or regulation of siting for power lines.

The Board then received comment from Ms. Pamela Faggert with Dominion Resources recommending that the Board deny the petition.

Based on the Board book material, staff presentation and public comment, and Board discussions, the Board, on a motion by Dr. Gordon, unanimously denied the petition.

Minute No. 7 - Air Division Director's Report: Mr. Michael Dowd updated the Board on the proposed Cypress Creek coal-fired power plant in Surry County, the state operating permit for Mirant including presentation of a report from the City of Alexandria on the Phase II report, greenhouse gas regulation, the court decision on Dominion Virginia Power's Virginia City Hybrid Energy Facility and the Hopewell Health Assessment Study.

Minute No. 8 - HPV Report: The Board received a report from Ms. Melanie Davenport on High Priority Violators for the Second Quarter of 2010.

Minute No. 9 - Public Forum: Ms. Lindsay Parra, a student in the Environmental Thought & Practice curriculum at the University of Virginia presented the final report on "Policy Options for Controlling Greenhouse Gas Emissions in Virginia".

Minute No. 10 - Future Meetings: The Board set September 10 and December 17 as the dates of their meetings for the remainder of 2010.

Minute No. 11 - Last Meeting of Ms. Thomson: Members of the Board thanked Ms. Thomson for her eight years of service to the Commonwealth as a member of the Board and Ms. Thomson spoke briefly about her years of service and her regard for the members of the Board, the staff and the public.

Cindy M. Berndt, Director, Office of Regulatory Affairs